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IN THE

Supreme Court of the United States

No. 70-5058

DOROTHY LYNCH, et al.,

Appellants,

v.

HOUSEHOLD FINANCE CORPORATION, et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

REPLY BRIEF FOR APPELLANTS

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REPLY BRIEF FOR APPELLANTS

I

THIS COURT CORRECTLY NOTED PROBABLE JURISDICTION PURSUANT TO 28 U.S.C. §1253

The Brief for Household Finance Corporation and Deputy Sheriff Friedler entirely misconceives this Court's jurisdiction pursuant to 28 U.S.C. §1253. The wage-earners' appeal is properly before this Court since: (a) their cases were "required . . . to be heard and determined by a district court of three judges," 28 U.S.C. §1253; and (b) they appeal "from an order of a three-judge district court 'granting or denying . . . an interlocutory or permanent injunction.'"

Gunn v. University Committee, 399 U.S. 383, 386-87 (1970). Where these conditions are satisfied, this Court has §1253 jurisdiction regardless of the grounds upon which the three-judge court's decision rests. E.g., direct review granted pursuant to §1253 where three-judge courts dismissed for lack of subject-matter jurisdiction: *Baker v. Carr*, 369 U.S. 186 (1962); *Abernathy v. Carpenter*, 373 U.S. 241 (1963); *Doud v. Hodge*, 350 U.S. 485 (1956); *Florida Lime Growers v. Jacobsen*, 362 U.S. 73, 85 (1960); direct review where three-judge court dismissed on ground relief barred by 28 U.S.C. § 2283: *Cameron v. Johnson*, 390 U.S. 611 (1968); abstention: *Dombrowski v. Pfister*, 380 U.S. 479 (1965); *Zwickler v. Koota*, 389 U.S. 241 (1967); failure to exhaust administrative remedies: *Damico v. California*, 389 U.S. 416 (1967).

(a) Since the cases at Bar were required to be heard by a three-judge court, they are directly appealable pursuant to 28 U.S.C. §1253. The finance company's argument, that direct appealability depends upon "whether the order of dismissal *required* the participation of three judges," (Brief for Appellees, p. 8), was repudiated in *Florida Lime Growers v. Jacobsen, supra.* There Mr. Justice Frankfurter, dissenting but stating the view of the entire Court, explained:

> "I start with the proposition, as I understand the Court to do, that whether a case is one directly appealable here under 28 U.S.C. §1253 depends upon the complaint, and not upon the result in the District Court. If three judges are required to hear the claims which are made, then we have direct appellate jurisdiction. . . ." 362 U.S. at 89.[1]

[1] See, also, *Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713, 715 (1962); *U.S. v. Georgia P.S.C.*, 371 U.S. 285, 287-288 (1963) ("once [the three-judge court is] convened, the case can be disposed of below or here on any ground, whether or not it would have justified the calling of a three-judge court."); *Sterling v. Constantin*, 287 U.S. 378, 393-94 (1932) (the jurisdiction of the three-judge court "extends to every question involved . . . and enables the court to rest its judgment on the decision of such of the questions as in its opinion effectively dispose of the case.").

[continued]

Bizarre and unprecedented results flow from the finance company's contention that direct appealability depends upon the result in the district court. For example, a three-judge court is unnecessary for the determination of insubstantial constitutional questions. *Ex Parte Poresky*, 290 U.S. 30 (1933). Since the three-judge court in *Harper v. Virginia Board of Elections*, 240 F. Supp. 270 (E.D. Va. 1964), reversed, 383 U.S. 663, 665 (1966), found the constitutional issue indistinguishable from *Breedlove v. Suttles*, 302 U.S. 277 (1937), an appeal pursuant to the finance company's proposal would lie only in the court of appeals.

The three-judge court below held, assuming the existence of subject-matter jurisdiction, alternatively that 28 U.S.C. § 2283 barred an injunction. That holding is reviewable pursuant to § 1253, *Cameron v. Johnson*, *supra*. The finance company's argument must concede the propriety of direct review: a single judge lacks authority to determine whether § 2283 bars relief, in a case otherwise appropriate for a three-judge court. *Idlewild Bon Voyage Liquor Corp. v. Epstein*, *supra*. (See Brief for Appellees, p. 10 n. 3). The finance company's proposal would thus require review, by the court of appeals, of the district court's dismissal for lack of subject-matter jurisdiction; and, by this Court, of the dismissal on the ground that § 2283 barred relief. The absurdity of such a result demonstrates the speciousness of the finance company's contention.

Direct appealability depends, not upon the result in the district court, but upon *this* Court's determination as to "whether the three-judge courts in these cases were properly convened." *Moody v. Flowers*, 387 U.S. 97, 99 (1967).

On direct appeal, this Court has jurisdiction "over *all* grounds of attack against the statute." *Florida Lime Growers v. Jacobsen*, *supra*, 362 U.S. at 84 (emphasis in original). The finance company's contention (Brief for Appellees, p. 29) that this Court may not review the district court's denial of a declaratory judgment is thus erroneous. *Samuels v. Mackell*, 401 U.S. 66 (1971); *Perez v. Ledesma*, 401 U.S. 82, 89-90 (Stewart, J., concurring).

"Thus, the *correct* determination of whether the action should have been heard by three judges controls the disposition of the appeal—whether to the Supreme Court or the Court of Appeals." Comment, The Three-Judge District Court and Appellate Review, 49 Va. L. Rev. 538, 564 (1963) (emphasis added).[2] Alleging jurisdiction pursuant to 28 U.S.C. §1343(3), the wage-earners' complaints sought to enjoin sheriffs, deputy sheriffs, and constables of the State of Connecticut from levying garnishments pursuant to Section 52-329 of the Connecticut General Statutes on grounds of its unconstitutionality (App. p. 10, 23-24, 37-38). These allegations meet the requirements for a three-judge court, *Idlewild Bon Voyage Liquor Corp. v. Epstein, supra*, including the existence of subject-matter jurisdiction. (See Brief for Appellants, pp. 19-35). Since the three-judge court was properly convened, 28 U.S.C. § 2281, a direct appeal lies pursuant to §1253.

(b) The wage-earners' complaints were heard by a three-judge court which denied their prayer for a permanent injunction. Holding that 28 U.S.C. § 2283 barred the injunctive relief which the complaints requested (App. p. 10, 26), the court entered judgment "denying all relief sought by plaintiffs and dismissing the complaints" (App. p. 19). As conceded by the finance company, "the three-judge court itself entered the order of dismissal" (Brief for Appellees, p. 8).[3] The finance company's reliance on *Mengelkoch v. Industrial Welfare Commission*, 393 U.S. 83 (1969), and *Wilson v. City of Port Lavaca*, 391 U.S. 352 (1968), is thus misplaced. Courts there held that the requisites of three-

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[2] See, e.g., *Rorick v. Board of Commissioners*, 307 U.S. 208 (1939); *Jameson Co. v. Morgenthau*, 307 U.S. 171 (1939); *Bailey v. Patterson*, 369 U.S. 31 (1962); *Zemel v. Rusk*, 381 U.S. 1, 5-7 (1965); *Flast v. Cohen*, 392 U.S. 83, 88-89 (1968).

[3] The three-judge court was designated by the Chief Judge of the United States Court of Appeals for the Second Circuit (App. p. 17). In its judgment, the district court identified itself as a three-judge court (App. p. 19).

judge court jurisdiction were lacking, and orders of dismissal were entered by single district judges.[4]

The finance company's contention that § 1253 is unsatisfied, on the ground that no "hearing" preceded the denial of a permanent injunction (Brief for Appellees, p. 9), merits little comment. While no evidentiary hearing was conducted—as the wage-earners observe in their Brief (pp. 1, 6, 9)—the district court "heard" the causes, as stated in its judgment (App. p. 19), pursuant to briefs in the *Lynch* and *Toro* cases and oral argument in the *Toro* case.

Since the wage-earners appealed from the order of a properly convened three-judge court which denied their prayer for a permanent injunction, this Court has jurisdiction pursuant to 28 U.S.C. § 1253.

II

DEPUTY SHERIFFS, SHERIFFS AND CONSTABLES ARE PUBLIC OFFICIALS WHO, WHEN ENGAGED IN THE SERVICE OF PROCESS, ACT UNDER COLOR OF STATE LAW

Deputy Sheriff Barrett's Brief, submitted by the Attorney General of the State of Connecticut, denies that he acts under color of law when serving process (Brief of the Appellee, Charles H. Barrett, Deputy Sheriff of New Haven County, pp. 6-9). Curiously, that Brief itself details Connecticut's statutory scheme which regulates every facet of deputy sheriff Barrett's office. The sheriff, like his deputies, has certain statutory "duties" in serving process, and in

[4] This Court's decisions in *Wilson* and *Mengelkoch* repudiate the finance company's assertion that "whether a single judge or three judges ordered dismissal does not matter" (Brief for Appellees, p. 8). Those cases illustrate the well-established rule that no appeal lies to this Court from the decision of a single judge, even where three judges are in fact required. *Stratton v. St. Louis Ry.*, 282 U.S. 10, 15-16 (1930); *Schackman v. Arnebergh*, 387 U.S. 427 (1967); *Mengelkoch v. Industrial Welfare Commission*, No. 23,997, ___ F.2d ___ (9th Cir. 1971) (holding that three-judge court erroneously dissolved itself).

making such service is "carrying out the routine functions of his office. . . ." (Brief of Deputy Sheriff Barrett, pp. 6, 7). As Barrett notes, "service is generally made by the deputy sheriff" (Brief, p. 6) who, with the sheriffs and constables, is thus the State's agent in effectuating its statutory policies relating to service of writs and garnishment process.[5]

A sheriff, like his deputies, is an officer of the Executive branch of government. Connecticut Constitution, Article Fourth, Section 25 (1965). He is a

> "public official under trust from the state, which has invested him with a portion of its sovereign power to be exercised in the interest of the public." *Rogers v. Commissioners,* 18 Conn. Supp. 401, 403 (1953), affirmed, 141 Conn. 426, 106 A.2d 757 (1954).

The deputy sheriff performs his duties "under color of office," pursuant to "power given him by our statutes." *Coite v. Lynes,* 33 Conn. 109, 115, 113 (1865). All society has an interest in the proper performance of these duties, since

> "It is the wise policy of the law that its process shall be directed to known public officers, and the law sanctions departure from this policy only in cases of supposed necessity."
>
> *Kelley v. Kelley,* 83 Conn. 274, 276, 76 A. 291, 292 (1910).

An unbroken line of cases establishes that a public officer acts under color of law when he performs duties authorized by statute. See, e.g., *Screws v. United States,* 325 U.S. 91, 107-108, 111 (1945); *Griffin v. Maryland,* 378 U.S. 130, 135 (1964); *Dandridge v. Williams,* 397 U.S. 471 (1970); *Adickes v. Kress,* 398 U.S. 144 (1970). See, also, *Monroe v. Pape,* 365 U.S. 167 (1961); *Laprease v. Raymours Furniture Co.,*

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[5] In the state court suits against Mrs. Lynch and Mrs. Toro, only a public officer could have served process. An indifferent person would have been barred from serving process. Conn. Gen. Stat. §52-50.

315 F. Supp. 716 (N.D. N.Y. 1970); *Santiago v. McElroy*, 319 F. Supp. 284, 292 (E.D. Pa. 1970). In *United States v. Wiseman*, No. 35286, _____ F.2d _____ (2nd Cir. 1971), the second circuit held that private process servers acted under color of law in effecting service and signing affidavits of service. Surely, then, a public officer such as a deputy sheriff *a fortiori* serves process under color of state law.

III

THE DISTRICT COURT ERRONEOUSLY REFUSED JURISDICTION OF THE WAGE-EARNERS' COMPLAINTS

A. Appellees' Assertion, That 28 U.S.C. §1343 (3) Confers No Jurisdiction to Redress Deprivations of Property in Violation of the Fourteenth Amendment, is Wholly Unsupported.

The wage-earners' Brief demonstrates that 28 U.S.C. §1343(3) and 42 U.S.C. §1983 were enacted in order to redress the deprivation, by persons acting under color of state law, of Fourteenth Amendment rights. 17 Stat. 13 (1871). By its terms, the Act of 1871 makes actionable *all* such Fourteenth Amendment deprivations, whether of life, liberty, or property. The legislative history of that Act gives authoritative support to such an interpretation (Brief for Appellants, pp. 28-33). Since the enactment of 28 U.S.C. §1331 did not contract the scope of the Act of 1871, §§1983 and 1343(3) must today be accorded the full scope which their Framers intended (Brief for Appellants, pp. 33-35).

None of the appellees has produced the slightest evidence of a Congressional purpose to restrict, by enacting what is now 28 U.S.C. §1331 in 1875, the scope of federal jurisdiction pursuant to the Act of 1871. They have not refuted the fact that the Act of 1875 wrought a far-reaching expansion of federal authority which is wholly inconsistent with an intention to contract Civil Rights Act jurisdiction.

Instead, appellees assert that "traditionally, the Fourteenth Amendment and associated Civil Rights Acts were primarily regarded as protectors of civil, not property rights" (Brief for Appellees, p. 12). None of the authorities cited by the finance company provides any support for this proposition.[6] Indeed, the first reported case construing the Act of 1871 upheld the right of a corporate plaintiff to seek redress for an allegedly unconstitutional deprivation of its property. *Northwestern Fertilizing Co. v. Hyde Park*, 18 Fed. Cas. 393 (C.C. Ill. 1873).

Without citing any supporting authority, the finance company further asserts that 18 U.S.C. § 242–§ 1983's "criminal analogue," *Monroe v. Pape, supra*, 365 U.S. at 206 (Frankfurter, J., dissenting)–"has never been understood by this Court to apply to deprivations of property" (Brief for Appellees, p. 13 n. 5). However, § 242 is derived from § 2 of the Civil Rights Act of 1866, 14 Stat. 27. *United States v. Williams*, 341 U.S. 70, 83 (1951), overruled on other grounds, *United States v. Price*, 383 U.S. 787, 797-98 (1966). Section 1 of that Act guaranteed, as the finance company states, "the property rights of newly-freed Negro citizens" (Brief for Appellees, p. 14). Section 2 of the Act of 1866 provided criminal penalties for any violation of § 1. *Screws v. United States*, 325 U.S. 91, 98-100 (1945). In *United States v. Wiseman*, No. 35286, _____ F.2d _____ (2nd Cir.

[6] *Strauder v. West Virginia*, 100 U.S. 303 (1880), and *Ex Parte Virginia*, 100 U.S. 339 (1880), upon which the finance company relies, do not suggest that property rights are not "civil rights." Both cases emphasize Congress' undoubted power to enforce the Fourteenth Amendment's guarantee against unconstitutional deprivations of property as well as life and liberty. 100 U.S. at 310; 100 U.S. at 345-46. The finance company's Brief (p. 12) also relies upon a Comment by Eugene Gressman, 39 Mich. L. Rev. 284, 287 n. 13 (1940). This Comment, which cites no authority for its statement that the Fourteenth Amendment did not protect property rights, has clearly been repudiated by its author. See, Gressman, The Unhappy History of Civil Rights Legislation, 50 Mich. L. Rev. 1323 (1952), which documents the intimate relationship between the Civil Rights Act of 1866, 14 Stat. 27, and the Fourteenth Amendment.

1971), the second circuit affirmed convictions under § 242 against professional process servers who deprived alleged debtors of their property without due process by signing false affidavits of service. Sections 242 and 1983 "are in *'pari materia,'* meaning that they are meant to protect the same rights of the victim." *Wiltsie v. California Department of Corrections*, 406 F.2d 515, 517 (9th Cir. 1968). See Cong. Globe, 42nd Cong., 1st Session, App. 68 (Rep. Shellabarger); *Monroe v. Pape*, 365 U.S. at 185, and 212 n. 18 (Frankfurter, J., dissenting). Since the Ku Klux Act of 1871 was "patterned after what is now 18 U.S.C. § 242" (Brief for Appellees, p. 13 n. 5), §§ 1983 and 1343(3) must be construed to redress any violation, by persons acting under color of law, of the Fourteenth Amendment, see *United States v. Price, supra*, including unconstitutional deprivations of real and personal property.[7]

The contention (Brief for Appellees, p. 14) that *Carter v. Greenhow*, 114 U.S. 317 (1885), *Pleasants v. Greenhow*, 114 U.S. 323 (1885), and *Holt v. Indiana Mfg. Co.*, 176 U.S. 68 (1900), support the denial of jurisdiction is untenable. None of these cases refused jurisdiction pursuant to the "personal liberty–property rights" test. "Unique considerations," *Perez v. Ledesma*, 401 U.S. 82, 126, 127 (1971) (opinion of Brennan, J.), have caused federal courts to decline jurisdiction of cases, such as these, challenging the collection of a state's taxes (Brief for Appellants, pp. 33-34 n. 22).[8] More-

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[7] 18 U.S.C. § 241 guards the same rights as § 242. See *United States v. Williams*, 341 U.S. at 87-93 (Douglas, J., dissenting); *United States v. Price, supra*, 383 U.S. at 797, 802-803. Section 241 protects the right to perfect the property interest in a homestead claim. *United States v. Waddell*, 112 U.S. 76, 80 (1884).

[8] "Taxes being the sole means by which sovereignties can maintain their existence," *Bank of Commerce v. Tennessee*, 161 U.S. 134, 146 (1896), states have a fundamental interest in revenue collection. While the "civil rights" which §§ 1983 and 1343(3) protect, *Holt v. Indiana Mfg. Co., supra*, 176 U.S. at 72, included "property rights" (Brief for Appellants, p. 32 n. 21), a common view at the time of *Holt* was that "political rights" were excluded. *United States v. Arizona*, 91 S. Ct. 260, 284-85 n. 15 (1970) (opinion of Harlan, J.) ("political

over, these cases refused jurisdiction on the ground that a litigant was not deprived of a right "secured by the Constitution," within the meaning of §§ 1983 and 1343(3), unless the Constitution "directly secured" the right to the individual. *Carter v. Greenhow*, 114 U.S. at 322, 323; *Pleasants v. Greenhow*, *supra*; *Bowman v. Chicago and Northwestern Ry. Co.*, 115 U.S. 611, 615-16 (1885); Note, 52 Harv. L.Rev. 1136, 1138-9 (1939). Pursuant to this rationale *Holt*, relying exclusively on *Carter* and *Pleasants*, held that federal courts must refuse § 1343(3) jurisdiction when state laws were alleged to deny equal protection or to deprive individuals of their property without due process, 176 U.S. at 72. Compare, *United States v. Cruikshank*, 92 U.S. 542, 554-55 (1875); *United States v. Williams*, *supra*, 341 U.S. at 73, 77, overruled, *United States v. Price*, *supra*, 383 U.S. at 797-98; *Hague v. C.I.O.*, 307 U.S. 496 (1939) (opinion of Roberts, J.); *Slaughter-House Cases*, 83 U.S. 36, 73-9 (1873).[9] In *Monroe v. Pape*, *supra*, 365 U.S. at 171, this Court overruled this narrow interpretation of §§ 1983 and 1343(3), and held that rights under the entire Fourteenth Amendment were "secured by the Constitution." Agreeing with the Court, Mr. Justice Frankfurter stated in his dissent that § 1983's

> "protection of 'rights, privileges or immunities secured by the Constitution' encompasses what 'due process of law' and 'the equal protection of the laws' of the Fourteenth Amendment guarantee against action by the States." 365 U.S. at 205.[10]

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rights" are "rights arising from governmental organization"); *Giles v. Harris*, 189 U.S. 475, 497 (1903) (Harlan, J., dissenting). A federal court's refusal of § 1343(3) jurisdiction in a challenge to a state's tax law, at the time of *Holt*, could thus rest on the ground that only "political rights" were at issue.

[9] By contrast, the test for whether an action was one "arising under" the constitution and laws, within the meaning of 28 U.S.C. § 1331, was far easier for a litigant to meet. *Starin v. New York*, 115 U.S. 248, 257 (1885).

[10] The legislative history of the Act of 1871 demonstrates that §§ 1983 and 1343 provide redress for any violation, by persons acting

Appellees' reliance on *Holt*, *Carter* and *Pleasants* is thus inapposite.

Congress enacted §§ 1983 and 1343(3) in furtherance of its power to enforce the Fourteenth Amendment. Nothing in the language of those statutes suggests that Congress failed fully to exercise its constitutional authority to remedy deprivations of life, liberty and property which violate the Fourteenth Amendment. The legislative history of §§ 1983 and 1343(3) provides not the slightest basis for departing from their plain meaning. If such a deviation is deemed desirable, however, Congress is the branch of our government which is empowered so to decide. *United States v. Guest*, 383 U.S. 745, 749 (1966); *United States v. Price*, *supra*, 383 U.S. at 789, 806-807; *Jones v. Mayer Co.*, 392 U.S. 409, 437 (1968); *Griffin v. Breckenridge*, 91 S.Ct. 1790, 1795, 1796 (1971). Courts, by contrast, "are not at liberty to seek ingenious analytical instruments," *United States v. Price*, *supra*, 383 U.S. at 801, or "filtering mechanisms" (Brief for Appellees, p. 15), for denying to §§ 1983 and 1343(3) the interpretation which Congress most reasonably intended.

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under color of state law, of the Fourteenth Amendment. E.g., Cong. Globe, 42nd Cong., 1st Sess. 244 (message from President Grant); 332-34 (Mr. Hoar); 369-70 (Mr. Monroe); 375-76 (Mr. Lowe); 429 (Mr. Beatty); 448 (Mr. Butler); 459-61 (Mr. Coburn); 475-76 (Mr. Dawes); 482-83 (Mr. Wilson); 501 (Mr. Frelinghuysen); 568 (Mr. Edmunds); 577 (Mr. Carpenter); 607 (Mr. Pool); 650-51 (Mr. Sumner); 666 (Mr. Spencer); App. 50 (Mr. Kerr); App. 68, 69 (Mr. Shellabarger); App. 81-85 (Mr. Bingham); App. 216 (Mr. Thurman); App. 310 (Mr. Maynard).

B. Allegations That a Public Official Has Deprived A Plaintiff of Fourteenth Amendment Rights Establish Federal Jurisdiction Pursuant to 28 U.S.C. § 1343(3).

Despite some lower-court interpretations of Justice Stone's concurring opinion in *Hague v. C.I.O.*, 307 U.S. 496, 518 (1939), this Court has never adopted the "personal liberty—property rights" test. See, *Monroe v. Pape*, 365 U.S. at 171 and 205. In fact, recent decisions emphasize this Court's disregard of the test. E.g., *Java v. Department of Social Services*, 91 S.Ct. 1347 (1971); *Rosado v. Wyman*, 397 U.S. 397, 402-403, 422-23 (1970); *Rinaldi v. Yeager*, 384 U.S. 305 (1966). Repudiation of the test would not, therefore, unsettle any established doctrine. To the contrary, its express rejection would clarify the jurisdictional basis of this Court's decisions which conflict with the test.[11]

Appellees' argument that welfare benefits have a "special § 1343(3) status" (Brief for Appellees, p. 21) which is denied wage-earners surely distorts the legal history of this past decade. Until recently, courts held that the denial of welfare benefits, unlike the denial of more traditional property interests, was not even justiciable. E.g., *Smith v. Board of Com-*

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[11] In *Eisen v. Eastman*, 421 F.2d 560, 566 n. 10 (2nd Cir. 1969), Judge Friendly suggested that adherence to the "personal liberty-property rights" formula would bar from the federal courts many actions alleging the unconstitutionality of a state's welfare program. This Court, of course, has affirmed § 1343(3) jurisdiction of every welfare case which it has reviewed, even when the welfare recipient claimed an unconstitutional denial of only three to four dollars monthly of her "property." *Rosado v. Wyman*, 397 U.S. 397, 402-403, 422-23 (1970); *Wyman v. Rothstein*, 398 U.S. 275 (1970), vacating and remanding, 303 F. Supp. 339 (S.D. N.Y. 1969); *Wyman v. Boddie*, 91 S.Ct. 2168 (1971), affirming, 434 F.2d 1207 (2nd Cir. 1970); *Wyman v. Rosado*, 91 S.Ct. 2169 (1971), affirming, 437 F.2d 619 (2nd Cir. 1970). See, also, *Damico v. California*, 389 U.S. 416 (1967); *Snell v. Wyman*, 393 U.S. 323 (1969); *King v. Smith*, 392 U.S. 309, 312 n. 3 (1968); *Shapiro v. Solman*, 396 U.S. 5 (1969), affirming, 300 F.Supp 409 (D. Conn. 1969); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Dandridge v. Williams*, 397 U.S. 471 (1970); *Lewis v. Martin*, 397 U.S. 552 (1970).

missioners, 259 F. Supp. 423 (D. D.C. 1966), affirmed, 380 F.2d 632 (D.C. Cir. 1967). See, generally, Reich, The New Property, 73 Yale L.J. 733 (1964). This Court has now accepted the designation of welfare benefits as "property," *Goldberg v. Kelly*, 397 U.S. 254, 262 n. 8 (1970); *Graham v. Richardson*, 91 S.Ct. 1848, 1853 (1971), and has affirmed jurisdiction of all constitutionally-based challenges to public welfare programs. *Supra*, note 11. However, this Court has rejected the contention that welfare benefits enjoy a specially privileged constitutional position distinct from other types of property. *Dandridge v. Williams*, 397 U.S. 471 (1970). It would be anomalous indeed if the working poor were now denied access to the federal courts for the defense of their property on the ground that welfare recipients enjoy a peculiarly favored § 1343(3) status.[12]

If anything, the historical evidence indicates a special congressional regard for the working poor. In seeking support for the Acts of Reconstruction, political advocates frequently minimized distinctions between white working men and the recently emancipated Negroes. The Fourteenth Amendment was essential to secure the rights of both. Senator Henry Wilson of Massachusetts explained:

> "We have advocated the rights of the black man, because the black man was the most oppressed type

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[12] Appellees seek to distinguish the welfare cases from the cases at Bar by arguing that welfare benefits are "dispensed as the result of a legislative determination that, without such assistance, welfare recipients cannot exercise their fundamental constitutional rights" (Brief for Appellees, p. 21). However, appellees cite no such legislative determination in support of this assertion. Nor do they refer to any decision of this Court expressing this rationale as the ground for accepting jurisdiction in welfare cases. A three to four dollar monthly benefit loss, which has been the subject of some welfare litigation, can hardly be said to directly affect the exercise of constitutional rights. See, note 11, *supra*. That welfare benefits have their origin in a "legislative determination" is not unusual. The Framers of the Fifth and Fourteenth Amendments made a "legislative determination" that property is essential to the exercise of constitutional rights (Brief for Appellants, p. 32 n. 21).

> of the toiling men of this country. . . . The man who is the enemy of the black laboring man is the enemy of the white laboring man the world over. The same influences that go to keep down and crush down the rights of the poor black man bear down and oppress the poor white laboring man." Stampp, *The Era of Reconstruction*, 102 (1965).

See, also, Brief for Appellants, p. 24; *Corfield v. Coryell*, 6 Fed. Cas. 546, 551 (C.C. Pa. 1823).

Section 1331 would hardly be rendered "virtually meaningless" (Brief of Deputy Sheriff Barrett, p. 12) by repudiation of the "personal liberty–property rights" test. E.g., *Bivens v. Six Unknown Named Agents*, 91 S.Ct. 1999 (1971). Clearly, Congress never intended that § 1331 should bar federal courts from entertaining suits which are plainly authorized, without regard to amount in controversy, by another jurisdiction-conferring statute. E.g., 28 U.S.C. §§ 1337, 1338; *Ames v. Hager*, 36 Fed. Rep. 129 (C.C. Cal. 1888). Compare, *Sanders v. Dobbs House, Inc.*, 431 F.2d 1097 (5th Cir. 1970); *Scott v. Young*, 421 F.2d 143 (4th Cir. 1970) (Scope of 42 U.S.C. § 1981 undiminished by enactment of Civil Rights Act of 1964). See, also, *United States v. Jackson*, 302 U.S. 628 (1938); Brief for Appellants, pp. 33-35, 20 n. 11.

Nor would express rejection of the "personal liberty-property rights" test unduly overburden the federal courts. Cases challenging the constitutionality of state tax laws would continue to be barred by 28 U.S.C. § 1341 (Brief for Appellants, pp. 33-34 n. 22). Indeed, many of the cases which appellees cite, purportedly to demonstrate the vitality of the test, are such tax cases (see Brief for Deputy Sheriff Barrett, p. 14; Brief for Appellees, pp. 16-17). Since this Court has not adopted the test, see note 11, *supra*, a "flood" of cases will not result from its express rejection. Additionally, some cases in which § 1343(3) jurisdiction has been refused must be entertained by the federal courts under other jurisdictional statutes. *Eisen v. Eastman*, 421 F.2d 560, 566-67 (2nd Cir. 1969). Finally, the inherent uncer-

tainty of the "personal liberty-property rights" test has itself engendered much needless litigation (Brief for Appellants, pp. 22-27).[13]

The finance company's contention, that federal district courts are "overburdened by the claims of civil rights litigants" (Brief for Appellees, p. 23), is uninformed. Although litigation involving federal civil rights is increasing, such actions comprised only 4.6% of the suits instituted in district courts during fiscal year 1970. Administrative Office of the United States-Courts, 1970 Report, p. II-31. This figure equals the number of labor relations cases filed, and is one-fourth the number of prisoner petitions. By contrast, 19.6% involved actions on contracts. 10.7% of all cases filed in the district courts involved motor vehicle torts, lacking any federal coloration other than the parties' diverse citizenship. *Id.* If federal courts are carrying an excessive workload, the remedy surely does not lie in limiting federal civil rights actions. Indeed, recent proposals have urged that the district courts should entertain all cases involving questions of federal law, regardless of jurisdictional amount. American Law Institute, *Study of the Division of Jurisdiction between State and Federal Courts*, 24-5, 172-76 (1969).

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[13] *Compare, McGuire v. Sadler*, 337 F.2d 902 (5th Cir. 1964) (§ 1343(3) jurisdiction in suit to rescind and enjoin sale of public land), *with, McManigal v. Simon*, 382 F.2d 408 (7th Cir. 1967) (no § 1343(3) jurisdiction over dispute whether corporation should donate law library to county). *Compare, Santiago v. McElroy*, 319 F. Supp. 284 (E.D. Pa. 1970) (§ 1343(3) jurisdiction to determine whether distress seizures of property by constables violated due process), *with, Howard v. Higgins*, 379 F.2d 227 (10th Cir. 1967) (no § 1343(3) jurisdiction where sheriff allegedly took $500 of prisoner's property). "Experience teaches that the wiser and better practice is for the court to assume jurisdiction for the purpose of determining whether the complaint states a claim upon which relief can be granted." *Joe Louis Milk Co. v. Hershey*, 243 F. Supp. 351, 354-55 (N.D. Ill. 1965). E.g., *Love v. Navarro*, 262 F. Supp. 520, 522 (C.D. Cal. 1967) (§ 1343(3) jurisdiction over controversy as to construction of road; complaint dismissed for failure to state claim upon which relief could be granted).

C. Since Summary Garnishment of Wage-Earners' Accounts Unconstitutionally Deprives Them of Significant Personal Liberties, the District Court Erred in Refusing Jurisdiction Pursuant to 28 U.S.C. § 1343(3).

The wage-earners' Brief demonstrates that summary garnishment unconstitutionally deprives wage-earners of significant personal liberties (Brief for Appellants, pp. 22-27). If this Court upholds the "personal liberty-property rights" test, therefore, the district court nonetheless erred in refusing jurisdiction.

Prejudgment garnishment summarily deprives wage-earners of the means to subsist, impedes their access to courts of law for the resolution of controversies, damages their reputations, creates the possibility of criminal prosecution, and impairs their ability to contract for the purchase of family necessities and to earn a living (Brief for Appellants, pp. 22-27, 13-18). As the Rev. Theodore M. Hesburgh, Chairman of the United States Commission on Civil Rights, recently stated, civil rights are "mere shadows" unless the economic rights of the underprivileged are secured. New York Times, May 14, 1971, p. 32. Surely summary garnishment effects a serious denial of personal liberty. See, *Osmond v. Spence*, 39 L.W. 2660 (D. Del. 1971) (three-judge court).

The garnishment of these wage-earners' accounts wreaks exactly the same havoc upon the working poor as in *Sniadach v. Family Finance Corporation*, 395 U.S. 337 (1969). There this Court recognized that summary garnishment "may as a practical matter drive a wage-earning family to the wall." *Id.* at 341-42. The only possible difference between the plights of these wage-earners and Christine Sniadach is that the latter's garnishee was her employer.[14] This distinction is surely without significance:

[14] Indeed, as the finance company's brief states, Mrs. Lynch's garnishee was "a credit union maintained by Mrs. Lynch's employer" (Brief for Appellees, p. 2). Like Christine Sniadach, these wage-earners relied upon their garnished wages to meet the common necessaries of life.

> "[The] root requirement [of due process is] that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971).

As in *Sniadach*, the summary garnishment of wage-earners' accounts may force working persons to abandon defenses and settle cases without any judicial mediation. (Brief for Appellants, pp. 13-15, 14 n. 6). In order to exercise his right to a day in court, the alleged debtor must forego the use of property which is necessary for subsistence. Compare, *Goldberg v. Kelly, supra*, 397 U.S. at 264. Access to the courts, and the availability of fair procedures, are of profound importance in our society's hierarchy of values. *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 171-72 (1951) (Frankfurter, J., concurring); *United Transportation Union v. Michigan Bar*, 91 S. Ct. 1076 (1971). Their denial constitutes the deprivation of a fundamental liberty. *Boddie v. Connecticut, supra*, 401 U.S. at 374-5.

IV

28 U.S.C. § 2283 IS NOT A BAR TO RELIEF.

A. Appellees' Assertion, that Summary Garnishment Is A Proceeding in a State Court, Is Erroneous

Appellees have urged this Court to rule that summary garnishment is a "proceeding in a State court," within the meaning of 28 U.S.C. §2283. They rely primarily upon *Hill v. Martin*, 296 U.S. 393 (1935). Appellees made an identical argument to the three-judge court which, in failing even to cite *Hill*, apparently deemed it inapposite. Indeed, the three-judge court did not hold that summary garnishment is a state court proceeding. The court recognized that "no court order is required" to garnish a wage-earner's account

(App. p. 23 n. 2).[15] As the wage-earners explain (Brief for Appellants, pp. 13-18, 35-38), garnishment in Connecticut occurs "before and without any judicial proceeding," *Coffin Bros. v. Bennett*, 277 U.S. 29, 31 (1921), and remains fully effective without any "actions by the Court [or] by its ministerial officers." *Hill v. Martin, supra*, 296 U.S. at 403 (see Brief for Appellants, p. 37 n. 24).[16]

Summary garnishments are thus not "proceedings" in the Connecticut courts. Moreover, the wage-earners in this appeal have no possibility of instituting proceedings which would lead to reduction or release of their garnishments. The finance company concedes that "state courts may have no power to release good faith garnishments except to the extent that they are excessive" (Brief for Appellees, p. 36). However, state courts are barred from releasing even a garnishment which is levied as an abuse of process, *Csakany v. Takacs*, 143 Conn. 485, 123 A.2d 764 (1956), upon exempt property. *Potter v. Appleby*, 136 Conn. 641, 73 A.2d 819 (1950). The court has no authority to inquire into the probable validity of the creditor's claim, or whether special circumstances warrant provisional security for an alleged creditor. *Sachs v. Nussenbaum*, 92 Conn. 682, 689, 104 A. 393, 395 (1918). As the District Court of Connecticut recently explained:

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[15] Appellees do not claim that the three-judge court held summary garnishment to be a proceeding in a state court. Nor do appellees refute the wage-earners' demonstration that, under Connecticut law, garnishment is levied prior to institution of the *in personam* suit (Brief for Appellants, p. 36); that garnishment may occur nearly two months before a creditor must docket his suit in the state court; and that distraught debtors may thus be forced to abandon their defenses and settle cases without any judicial mediation (Brief for Appellants, pp. 14, 17 n. 8, 18 n. 9).

[16] *Hill* ruled, in circumstances wholly inapplicable to the cases at Bar, that § 2283 prohibited federal courts from enjoining collection of a judgment rendered pursuant to lengthy state court proceedings. See *Atlantic Coast Line R. Co. v. Engineers*, 398 U.S. 281, 287 (1970); *Toucey v. New York Life Insurance Co.*, 314 U.S. 118, 136 (1941).

> "Prior to the termination of the litigation, an attachment may be reduced or dissolved *only* upon a showing that the attachment is excessive, § 52-302, or upon substitution of a bond with surety, § 52-304," *Black Watch Farms v. Dick*, 323 F. Supp. 100, 101-2 (D. Conn. 1971) (emphasis added).

Since the garnishments in the cases at Bar are not excessive within the meaning of § 52-302, and since the wage-earners cannot afford a bond, they have no grounds for invoking the state court's jurisdiction.[17] (See Brief for Appellants, pp. 13-18).

The appellate division of Connecticut's circuit court, where the in personam actions against Mrs. Lynch and Mrs. Toro are pending, has unequivocally ruled that the circuit court lacks authority to dissolve a garnishment on the ground that it was levied unconstitutionally; and that the refusal to dissolve a garnishment on grounds of unconstitutionality is not appealable. *Michael's Jewelers v. Handy*, 6 Conn. Cir. 103, 266 A.2d 904 (1969) (Brief for Appellants, pp. 15-16).

Where no court order is necessary to freeze a wage-earner's assets from the date of levy until final disposition of the suit, and where an alleged debtor may not institute state court proceedings with respect to summarily-levied garnishments, a Connecticut garnishment can hardly be deemed a "proceeding in a State court." [18]

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[17] In order to challenge an excessive garnishment, or to substitute a bond, the alleged debtor must commence a proceeding distinct from the creditor's suit, *Sachs v. Nussenbaum, supra*, by serving process upon the officer who attached or garnished his property, and upon the creditor or his attorney. Conn. Gen. Stats. §§ 52-301, 52-306; 1963 *Connecticut Practice Book*, Forms 532, 534.

[18] Connecticut appears to be the only state authorizing an attorney for an alleged creditor to garnish or attach property without any action by a judge or clerk of court. Other states require the writ to be issued by a judge or clerk of court. E.g., Hawaii Stat. § 651-3, 652-2, 633-1; Idaho Code § 8-502; Mass. Laws C. 223 §§ 16, 20, 42, C. 246; Mont. Rev. Code § 93-4302. See, also, N.H. Laws § 509.2 *et*

B. The Record in This Appeal Fails To Support Appellees' Contention that 28 U.S.C. § 2283 Barred the Award of Any Relief.

Appellees wholly ignore the wage-earners' argument that no evidence in the record justified the district court's conclusion that enjoining summary garnishments would "substantially interfere" with state court proceedings (Brief for Appellants, pp. 40-42). More than fifty years ago, the Connecticut Supreme Court held that the "progress of the pending suit . . . was not concerned with or in any way affected by" the dissolution of a garnishment. *Sachs v. Nussenbaum, supra,* 92 Conn. at 686, 104 A. at 394.

Appellees' argument that no plaintiff or defendant class can be defined should properly be made to the district court on remand, at a hearing pursuant to Federal Rule 23(c).[19] Similarly, this Court cannot affirm, on a barren

seq. (writ must bear the seal of court, teste of justice of the court, and facsimile of clerk's signature.) As a condition to issuance of the writ, the alleged creditor must generally post a bond, e.g., Ariz. Rev. Stat. § 12-1524; Calif. Code of Civil Proc. § 539; Wis. Laws § 266.06; New York C.P.L.R. 6212; and must frequently demonstrate the existence of special circumstances requiring his protection by an attachment or garnishment, e.g., Minn. Stat. 571.41; New York C.P.L.R. § 6201; Ga. Code §§ 8-101, 8-501; Vt. Rules Civil Proc. §§ 4.1, 4.2; Ala. Code, Title 7, §§ 846-47.

[19] As the wage-earners explain (Brief for Appellants, p. 40 and n. 26), the district court's erroneous jurisdictional ruling was its exclusive reason for stating that no plaintiff class could be defined. The definition of the class in the complaints (App. p. 6, 34) is sufficient to satisfy Rule 23. *Swarb v. Lennox,* 314 F. Supp. 1091 (E.D. Pa. 1970); *Eisen v. Carlisle and Jacquelin,* 391 F.2d 555, 561-63 (2nd Cir. 1968); Wright, *Class Actions,* 47 F.R.D. 169 (1969); 2 Barron and Holtzoff, *Federal Practice and Procedure* (1961), 1969 Pocket Parts, pp. 77-78. See, also, *Vasquez v. Superior Court,* 94 Cal. Reptr. 796, 484 P.2d 964 (Supreme Court, 1971).

Appellees' arguments as to the alleged lack of definition of the defendant class are similarly groundless. *Washington v. Lee,* 263 F. Supp. 327, 330-31 (M.D. Ala. 1966), affirmed, 390 U.S. 333 (1968). Deputy sheriffs adequately represent the class of process servers. See note 5, *supra,* and accompanying text. Not only is the class of

record, the district court's denial of future injunctive relief. The record indicates that persons claiming to be creditors of the wage-earners may sue them, exposing them to the risk of summary garnishment prior to suit (App. p. 44, 46-47). On remand, counsel for the wage-earners are prepared to move for the intervention of other persons who similarly may be sued in the Connecticut courts. A hearing in the district court will demonstrate that irreparable harm will occur to these persons absent injunctive relief, since garnishments are a major cause of personal bankruptcies, particularly in a period of recession; that Household Finance Corporation and other major Connecticut creditors routinely garnish the scarce assets of their alleged debtors prior to suing them; and that the pressure of garnishment forces alleged debtors to settle cases without any opportunity for a judicial determination of the validity of creditors' claims. *Sniadach v. Family Finance Corp., supra.*[20]

Finally, appellees' argument that § 2283 bars the award of declaratory as well as injunctive relief ignores the plain language of § 2283 and the historical context in which § 2283 was enacted. See, Note, Federal Court Stays of State Court Proceedings: A Re-Examination of Original Congressional Intent, 38 U. Chi. L. Rev. 612 (1971). See, also, *Samuels v. Mackell, supra; Perez v. Ledesma, supra* (opinion of Brennan, J.).

Defendants clearly identifiable, but their financial stake in serving writs ensures that they will vigorously defend the constitutionality of Conn. Gen. Stat. § 52-329.

[20]Since Mrs. Toro is entitled to future injunctive relief, her case is not moot. The district court, it may be noted, did not hold that Mrs. Toro's complaint should be dismissed on grounds of mootness (App. p. 22 n. 1). Mrs. Toro's complaint also requested that the garnished funds be returned to her "without cost" (App. p. 38). She has not been reimbursed the $10.00 "legal expenses" which her account was charged as the result of the garnishment (App. pp. 42,43).

V

NO STATE COURT REMEDIES ARE AVAILABLE TO CONNECTICUT WAGE-EARNERS

Household Finance Corporation and Deputy Sheriff Friedler contend that state court remedies are adequate for contesting the constitutionality of summary garnishments (Brief for Appellees, pp. 35-38). This argument, which the Attorney General of Connecticut has not advanced on behalf of Deputy Sheriff Barrett, is wholly speculative and unfounded.

Michael's Jewelers v. Handy, supra, forecloses a constitutional challenge to summary garnishment in Connecticut's circuit court. The finance company states that the decision in *Michael's Jewelers* "was apparently not appealed further" (Brief for Appellees, p. 37). However, no appeal lies as of right to the Connecticut Supreme Court from the appellate division of the circuit court. The Supreme Court reviews a judgment of the appellate division only when the latter certifies that a substantial issue of law warrants the Supreme Court's consideration; or where the Supreme Court itself decides, in its discretion, that review is warranted. 1963 *Connecticut Practice Book* §§ 740-742. In *Michael's Jewelers v. Handy,* the appellate division failed to certify the existence of a substantial issue of law. See 1963 *Connecticut Practice Book* §§ 751-756. Although the alleged debtor in *Michael's Jewelers* filed a petition for certification in the Connecticut Supreme Court, the petition was never acted upon since the creditor withdrew the underlying *in personam* action (see Brief of appellants in reply to appellees' Motion to Affirm and Motion to Dismiss or Affirm, at p. 2 n. 3).

The court of common pleas and the superior court are, like the appellate division, bound by the Connecticut Supreme Court's decisions. Those decisions bar courts from dissolving or reducing a garnishment except where explicitly authorized by statute (Brief for Appellants, pp. 14-16). The finance company has offered no authority for the proposition that

the court of common pleas and the superior court are any more apt to deviate from those decisions than was the appellate division in *Michael's Jewelers*.

The Connecticut Supreme Court is the only state forum offering the bare possibility that wage-earners might receive a full hearing as to the constitutionality of prejudgment garnishment. But this Court has never required litigants—particularly indigent litigants—to exhaust all state remedies, no matter how time-consuming or speculative, as a condition of vindicating their federal constitutional rights in a federal forum. E.g., *Local Loan Co. v. Hunt*, 292 U.S. 234 (1934); *Lane v. Wilson*, 307 U.S. 268 (1939); *Monroe v. Pape*, 365 U.S. 167 (1961); *Wisconsin v. Constantineau*, 400 U.S. 433 (1971).

Despite these obvious barriers to redress, the finance company chides the wage-earners for not resorting to the state courts as Christine Sniadach did in Wisconsin (Brief for Appellees, pp. 37-8). The finance company neglects the facts that Wisconsin courts possess the power, denied to Connecticut courts, to dismiss a garnishment where abuses come to the court's attention, *Sniadach v. Family Finance Corp.*, 37 Wis.2d 163, 173-4, 154 N.W.2d 259, 265 (1967), reversed on other grounds, 395 U.S. 337 (1969); that no prior decisions of the Wisconsin Supreme Court barred lower courts from dissolving a garnishment on grounds of unconstitutionality (see memorandum of decision of Wisconsin circuit court, pp. 37, 39 of Appendix filed with this Court in *Sniadach*); and that the refusal to dissolve a garnishment in Wisconsin is, unlike Connecticut, appealable. *Mahrle v. Engle*, 261 Wis. 485, 53 N.W.2d 176 (1952); memorandum of decision of Wisconsin circuit court, *supra*; Wis. Laws §§ 274.09, 274.33.

The finance company utterly ignores the substantial monetary barriers which Connecticut has erected to bar indigent persons from redress in its courts. Unless the party appealing to the Connecticut Supreme Court pays a forty-five dollar entry fee, a fifty dollar record fee, and gives security

in the amount of $150.00, "the appeal shall be void and of no effect," 1963 *Connecticut Practice Book* § 602; Conn. Gen. Stats. §§ 52-259, 52-269. Costs of transcripts must also be paid. 1963 *Connecticut Practice Book* § 608A.

A party seeking redress in the superior court must pay an entry fee of forty-five dollars; in the court of common pleas, the fee is thirty dollars. Conn. Gen. Stats. § 52-259. Trial fees and costs, which the legislature has now increased, are substantial. Conn. Gen. Stat. § 52-257, as amended, P.A. 302 (effective October 1, 1971). Neither of these courts may render a declaratory judgment unless, as a jurisdictional requirement, "all persons having an interest in the subject matter of the complaint are parties to the action or have reasonable notice thereof." 1963 *Connecticut Practice Book*, § 309(d). The prohibitive cost of serving process upon such persons or of notifying them, *National Transportation Co. v. Toquet*, 123 Conn. 468, 481-5, 196 A. 344, 349-51 (1937), renders a declaratory action a will-o'-the wisp to low-income wage earners.[21] Wisconsin, where Christine Sniadach litigated her claims, requires relatively low entry fees, e.g., Wis. Laws §§ 271.21, 251.90, and permits indigent persons to proceed *in forma pauperis*. Wis. Laws §§ 271.29.[22]

[21] The circuit court is prohibited from rendering a declaratory judgment. Conn. Gen. Stat. § 52-29. In order to transfer a declaratory action from the circuit court to the court of common pleas or superior court, as suggested by the finance company (Brief for Appellees, p. 37), a thirty dollar fee must be paid to the clerk of the circuit court. Additionally, the usual entry fee must be paid to the clerk of the superior court or common pleas court. Conn. Gen. Stat. § 52-32.

[22] 1963 *Conn. Practice Book* § 28A (effective September 1, 1971), establishes the procedure to be followed where a plaintiff claims a right to proceed *in forma pauperis*. See, *Boddie v. Connecticut, supra*. On July 8, 1971, Governor Meskill of Connecticut vetoed Public Act No. 714, "An Act Concerning Waiver of Court Fees and Costs Payable to Indigent Persons." His veto message stated:

> "In my opinion this legislation gives greater latitude to the court to waive payment of costs and fees and expenses of services than is required by the most recent Supreme Court decision.

In Connecticut, therefore, no remedies are available for challenging the constitutionality of summarily-levied garnishments. Where the alleged debtor is indigent, the finance company's contention that such remedies exist is frivolous.

CONCLUSION

The district court had jurisdiction over the wage-earners' complaints. Neither injunctive, declaratory, nor future injunctive relief was barred by 28 U.S.C. §2283. This Court, pursuant to 28 U.S.C. §1253, should reverse the judgment of the district court.

Respectfully submitted,

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"I would prefer to be limited by the opinion of the Supreme Court concerning the right of an indigent to litigate without the payment of fees."

Letter of Governor Thomas Meskill to Hon. Gloria Schaffer, Secretary of the State.